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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Implementation of the Satellite Home
Viewer Improvement Act of 1999

Broadcast Signal Carriage Issues

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CS Docket No. 00-96

REPLY COMMENTS OF LOCAL TV ON SATELLITE, LLC

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SUMMARY

Local TV on Satellite, LLC (“LTVS”) provides a more complete “picture” of both the capabilities and inherent limitations of satellite technology in these Reply Comments, in response to issues raised in comments filed in the Satellite Home Viewer Improvement Act (“SHVIA”) carriage proceeding. An understanding of these capabilities and limitations is central to the enactment of reasonable carriage regulations by the FCC.

LTVS compares the capacity of satellites licensed to the Ka-band and Ku-band orbital slots and explains why satellites with spot beams in the Ka-band are more efficient. The selection of the satellite frequency band (Ka- or Ku-band) and the use of spot beams impacts the carriage abilities of satellite providers. Providers using Ka-band spot beam satellites can carry local signals in more numerous markets in the United States than providers using a Ku-band satellite.

In addition to a review of the advantages of spot-beam satellites, LTVS points out certain limitations in spot beam coverage of a DMA, such as in the case of non-contiguous counties comprising a DMA. LTVS also addresses a provider’s limited ability to adjust satellites to modify DMA boundaries or to add new stations in markets after a satellite is launched.

In response to varying standards suggested by commenting parties to measure a “good quality signal,” LTVS elects to defer to the FCC’s judgment in selecting an appropriate standard. LTVS also suggests that the FCC establish a

standard specific to satellite carriage for determining whether a local station's signal has been "materially degraded."

The topic of modification of markets was the subject of much comment from filing parties. LTVS reviews a number of the modification scenarios presented in these comments and opines on whether modification of markets should, or should not, be allowed in the following circumstances: the removal of a community from a DMA by a subsequent Nielsen market publication; the cessation of carriage of a station in a DMA based upon viewing patterns; the limitation of carriage of a station within a DMA to the station's Grade B contour; and the carriage of a station's signal within a DMA if the station is not located in the DMA. LTVS also comments on a filing party's suggestion that a periodic DMA review be implemented.

These Reply Comments address the carriage of program-related content in both digital and analog signals. Free over-the-air program-related content in an analog signal can be made available in the future to satellite subscribers with new transmission equipment and receivers. Providers can also carry this content in the 19.4 megabit/second digital signal, so long as broadcasters provide certain necessary information in the signal bit stream.

On the issue of carriage of a station's digital signal, LTVS proposes that the FCC allow a station to elect carriage of either the digital or analog signal, rather than require providers to carry dual signals. LTVS urges the Commission to proceed in enacting regulations for carriage of the digital signal, effective at a future

date, due to the time required for a provider to construct and launch a satellite in compliance with the regulations.

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REPLY COMMENTS OF LOCAL TV ON SATELLITE, LLC

Local TV on Satellite, LLC ("LTVS") hereby files these Reply Comments in response to the Comments filed in this proceeding. LTVS previously reviewed the carriage provisions of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), which are the subject of this FCC proceeding, in its Comments and, therefore, need not recite them again in these Reply Comments.

I. **SATELLITES HAVE THE CAPACITY TO CARRY NUMEROUS CHANNELS IN MULTIPLE MARKETS.**

A. **Some Providers Argue Lack of Capacity for Inability to Carry Stations in More Markets**

Several of the parties filing comments, specifically DirecTV, Inc. ("DirecTV"), EchoStar Satellite Corporation ("EchoStar") and BellSouth Corporation and BellSouth Entertainment, Inc. ("BellSouth"), assert that, due to the limited capacity of satellites, providers can either carry numerous must-carry stations or serve more markets in the absence of must-carry, but cannot do both. DirecTV Comments at 4, 12, 22, 24 and 33; EchoStar Comments at i, iii – iv and 3; BellSouth Comments at 5.

For example, EchoStar states that “[T]he more stations a satellite carrier has to carry in a given city, the fewer cities it will be able to serve with local network signals.” EchoStar Comments at i. Likewise, DirecTV states that “the greater the must carry burden the Commission imposes, the fewer markets satellite carriers will be able to serve with local channels” DirecTV Comments at 4. These parties also cite to capacity problems for their inability to carry multiple NCE stations. EchoStar Comments at 3 - 4; DirecTV Comments at 33 - 34; BellSouth Comments at 23.

B. Use of Spot Beams in the Ka-Band Increases Capacity Efficiency

The EchoStar and DirecTV arguments are grounded on the limited capacity of present Ku-band satellites used to deliver local signals. A provider using a present Ku-band satellite without spot beams for local signals must allocate a channel used to provide local service across the entire United States. Because EchoStar uses the Ku-band without spot beams to provide local signals, it asserts that channel spectrum must be dedicated across the country if even one channel is added in any local market: “to add a local channel in any one local market, EchoStar must currently dedicate one channel’s spectrum equivalent nationwide, thus, that channel becomes unusable for the rest of the country.” EchoStar Comments at 3.

However, an alternative technology is available that allows a provider to more efficiently provide local signals to a particular market. The use of spot beams on satellites permits a provider to efficiently re-use spectrum for carrying local

signals, rather than wasting valuable spectrum on a channel reserved nationwide, with the programming intended for reception in only a select market area. A spot beam is a narrow beam from a satellite antenna that illuminates, with high (concentrated) irradiance, a limited area of the Earth by using more directive antennas rather than Earth-coverage antennas. With the use of spot beams, providers have more capability to carry multiple signals in numerous markets. Ka-band satellites can use smaller antennas because of the higher frequency and the Ka-band has approximately 46% more frequency allocated than the Ku-band, both adding to the capability of the Ka-band to carry more channels. Thus, Ka-spot beaming can be more spectrum-efficient than Ku spot-beaming. Given the practical satellite launching restrictions of fixed antennae size and mass, a satellite or satellites operating from a single orbital slot in the Ka-band, compared to a similar satellite platform in the Ku-band, increases useable capacity by a factor of three-to-one for local station carriage via the most-efficient spot beaming technology. For example, if a satellite provider can re-transmit 100 local stations from an orbital slot in the Ku-band, then 300 local stations theoretically could be carried using a slot in the Ka-band utilizing the same bit rate. With the use of Ka-band satellites with smaller antennas, providers can more effectively form tightly focused spot beams and increase the re-use of frequencies. The newer Ka-band satellites are more capacity-efficient than the existing Ku-band satellites presently in use by DBS providers.

Both DirecTV and EchoStar are building satellites that will utilize spot beam technology. On March 10, 2000, Space Systems/Loral, a Loral Space & Communications company, announced that it had been awarded a contract to build two EchoStar satellites, EchoStar VIII and EchoStar IX. EchoStar VIII will carry 16 high-power Ku-band DBS transponders along with customized spot beam coverage.¹ EchoStar IX will be a hybrid Ku- and Ka-band satellite with a 32 transponder Ku-band payload in addition to the Ka-band payload.² EchoStar's satellites VII and VIII will include spot-beam technology, according to an EchoStar news release.³ Delivery of EchoStar VII and EchoStar VIII is expected in December, 2001 and delivery of EchoStar IX is expected in 2002.⁴

DirecTV has also announced construction of a spot beam satellite.⁵ The satellite, named the DIRECTV-4S, "will be the first spacecraft in the DIRECTV fleet to use highly focused spot beam technology that will enable DIRECTV to expand its local channel offerings in metropolitan markets across the country."⁶ The satellite will be launched in the fourth quarter of 2001.⁷

With the use of spot beam technology in the Ku-band, providers will be able to carry local signals in more markets, including noncommercial educational

¹ <http://www.loral.com/inthenews/000310.html>.

² *Id.*

³ <http://www.spaceflightnow.com/news/0002/27newechostars>.

⁴ *Id.*

⁵ <http://www.directtv.com/press/pressdel/0,1112,255,00.html>.

See also http://www.hughespace.com/hsc_pressreleases/99/12/08/directv4s.html.

⁶ *Id.*

("NCE") stations, but the providers' signal carriage will be more limited by using Ku-band satellites than if Ka-band satellites were to be used. For example, EchoStar argues that a primary reason for its opposition to the carriage of multiple NCE stations is the impact such carriage would have on its ability to serve other local markets: "If must carry obligations for cable were woodenly imposed in [the satellite] context, . . . the imposition of such a burden [would] severely limit the number of cities that receive local television service from DBS providers" EchoStar Comments at 3. *See also* DirecTV Comments at 33. These arguments for carriage of fewer NCE stations and local signals in fewer markets due to a lack of capacity appear to be based on the assumption that Ku-band satellites will be used by the providers rather than Ka-band spot beam satellites.

The use of spot-beam satellites in the Ka-band allows providers to carry local signals in more numerous markets, significantly mitigating many of the concerns of limited satellite capacity. If providers elect to use the Ku platform (with technological limitations) rather than the Ka, they will limit the number of markets or stations that they can carry compared to that possible with the use of Ka-band technology. Such limitations are unnecessary given the unused capacity on the Ka-band.⁸

As pointed out by the National Rural Telecommunications Cooperative ("NRTC"), a decision not to carry signals or to limit the number of local signals in

⁷ *Id.*

⁸ *See, In re Assignment of Orbital Locations to Space Stations in the Ka-Band*, DA 97-2654 (released December 19, 1997).

rural America, with its smaller subscriber base and lower-profit markets, is an economic decision. NRTC Comments at 2, 5.

II. **SATELLITE PROVIDERS SHOULD CARRY FREE OVER-THE-AIR PROGRAM-RELATED CONTENT.**

LTVS argued in its Comments that satellite carriers should be obligated to carry program-related content, including audio, video and data. LTVS Comments at 24 - 27. Satellite providers, however, argue that they cannot carry such program-related content. DirecTV Comments at 41; BellSouth Comments at 25. DirecTV states that its system does not support any portion of an analog broadcast signal other than the primary video, audio, and line 21 of the VBI, and that transmission equipment would need to be modified and the receivers used by DirecTV subscribers replaced in order to support the additional functions. DirecTV Comments at 41. BellSouth states that it cannot carry content, aside from closed captioning, as the modifications to the provider's platform required to accommodate multiple standard and non-standard signals (such as colorbars or Ghost Canceling Reference Signal) may not be technically or economically feasible. BellSouth Comments at 25. Accommodation of free over-the-air program-related content, including audio, video and data, may not be possible with transmission and reception equipment currently in use, however, in the future, equipment and receivers can be made available to allow this content to be passed on to new and upgraded subscribers.

LTVS's technical design will allow it to carry free over-the-air program-related content in its carriage of the full 19.4 megabit signal. If the full 19.4 megabit signal is carried by a satellite provider, the provider can pass along an

entire digital signal. The FCC should require satellite providers to pass along carriage of free over-the-air program-related content, including, but not limited to, closed-captioning, audience measurement and/or ratings data and alternative language to subscribers (Secondary Audio Programming or SAP), as it is technically possible for the providers to pass through such content.

In order for a satellite provider to pass these parts of the signal along to the viewer, the broadcaster must provide certain necessary information in the signal bit stream. The FCC should require broadcasters to provide the carrier with accurate service information parameters in conformance with ATSC program service information protocol and any data identifiers required. If broadcasters provide this necessary bit identification in the digital signal to the provider, a provider can pass this along to the viewer.

III. DIGITAL CARRIAGE RULES SHOULD BE ENACTED NOW BUT EFFECTIVE IN SEVERAL YEARS SO THAT PROVIDERS HAVE THE OPPORTUNITY TO CONSTRUCT AND LAUNCH COMPLIANT SATELLITES.

Paxson Communications Corporation ("Paxson") proposes in its Comments a phased-in schedule for digital carriage in which a station can elect between carriage of its analog or its digital signal, but not both signals, prior to the DTV transition date. Paxson Comments at 9. For DTH systems, a station would have the right to elect mandatory carriage of its digital signal, instead of analog, on January 1, 2002 when the satellite must-carry rules take effect. Paxson Comments at 9 .

LTVS agrees that carriage of both the digital and analog signals should not be required. LTVS also suggested in its Comments, as did Paxson, that a station

have the option of selecting either its analog or digital signal for carriage. LTVS Comments at 36. Dual carriage is not necessary due to flexible down-conversion technology currently available to the providers. This technology allows those consumers using an older analog television set to receive a digital signal and have it down-converted to an analog signal, as well as allowing those consumers using a digital television set to receive the digital signal directly.

LTVS urges the Commission to enact digital carriage rules now, even if they do not take effect for several years. Satellites, once designed, constructed and launched, are in orbit for a projected life of 15 years. Once in orbit, there is little possibility of making changes in carriage specifications. Therefore, satellite providers need as much advance notice as is possible of the regulations in order to design and launch satellites that will be in compliance with these regulations. By establishing digital carriage rules now to take effect in several years, providers will be able to comply with the regulations and provide digital service to subscribers in a timely fashion.

IV. **PROVIDERS SHOULD HAVE DISCRETION IN THE SELECTION OF THE RECEIVE FACILITY.**

LTVS agrees with several of the commenting parties on the necessity for satellite carriers to have “maximum latitude and discretion” in designating the local receive facility, whether the facility be in-market or out-of-market. See, EchoStar Comments at 13 – 14; BellSouth Comments at 15 – 16. As LTVS also pointed out in its Comments, providers should have discretion in locating regional receive facilities. LTVS Comments at 15. Regional receive facilities could be used in those

cases where heavy rainfall makes it desirable for the signals to be transferred out-of-state to a regional facility with lesser rainfall in order to increase received-signal availability, as in the case of South Florida.

V. **THE FCC SHOULD ENACT A STANDARD FOR GOOD QUALITY SIGNAL AND A GOOD QUALITY SIGNAL SHOULD BE PROVIDED TO THE SATELLITE CARRIERS.**

LTVS suggests in its Comments that the FCC enact a standard for “good quality signal” as used in the cable context.⁹ LTVS Comments at 17. Other commenting parties likewise suggest that the definition of quality of signal in the satellite context should be that required for delivery of a signal to a cable headend. BellSouth Comments at 19; National Association of Broadcasters (“NAB”) Comments at 12 – 15; Joint Comments of the Association of America’s Public Television Stations, The Public Broadcasting Service and The Corporation for Public Broadcasting at 15. DirecTV, however, suggests that the FCC adopt the definition of “good quality signal” as one that meets the requirements of GRGR-338 CORE, TV1 for <20 route miles. DirecTV Comments at 32. LTVS agrees that an objective standard should be established for delivery of a “good quality signal” to the satellite carrier’s receive facility, but defers to the FCC’s judgment to select the standard to be imposed.

LTVS disagrees with some of the commenting parties’ position that satellite carriers should be required to carry any signal, even one that fails to meet the

⁹ The standard is set forth in 47 C.F.R. § 76.55(c)(3). TV stations must deliver a signal level of –45 dBm for UHF signals or –49 dBm for VHF signals to be eligible for carriage in the cable context.

minimum statutory criteria as a "good quality signal."¹⁰ It is certainly not in the best interest of the provider, the local station, or the viewer to have a signal of undesirable quality carried, and a local station can be expected to take all steps necessary to ensure delivery of a good quality signal to the receive facility. As stations are already required to deliver a signal meeting a certain standard in the cable context, it would be expected that the same stations would provide a similar "good quality signal," in compliance with SHVIA, to the satellite receive facility.

VI. THE FCC SHOULD CONSIDER THE LIMITATIONS IMPOSED BY TECHNOLOGY BEFORE ALLOWING MARKET MODIFICATION.

In response to the FCC's inquiry on modification of markets, the preliminary issue is the technological limits imposed by the use of spot beams as constraints on the modification of markets. As LTVS stated in its Comments, market modifications are extremely difficult when signals are carried via satellite and the FCC should decline to adopt a market modification mechanism at the present time. LTVS Comments at 14.

A. Technological Limitations and Market Modifications

The use of spot beams, while providing greater spectrum efficiency and optimization in serving local television markets, may technologically limit the ability of a provider to modify or expand a DMA. After a satellite is launched, changes are difficult (if not impossible) and modifying the DMA may not be technically feasible. For example, a spot beam might be broad enough to "cover"

¹⁰ Joint Comments of the ABC, CBS, FOX and NBC Television Network Affiliate Associations ("Network Affiliates") at 11 - 12; Association of Local Television Stations, Inc. ("ALTV") Comments at iii, 29; NAB Comments at 5 - 6.

new counties integrated into a growing DMA after launch of the satellite. However, if an area is experiencing rapid growth and the DMA correspondingly grows, the beam covering the DMA may not be able to “cover” this unanticipated expansion. Likewise, new stations coming on the air in a DMA necessitate additional capacity for the unexpected stations. LTVS’s concern, if the FCC allows market modification, is the limited ability of the technology, at the present time, to allow providers to comply with the regulations. As set forth in its Comments, LTVS disagrees with implementation of a market modification mechanism, instead suggesting that markets be defined as established in either the 1999-2000 Nielsen publication or the annual publication at the time the FCC rules take effect. LTVS Comments at 13 - 14.

BellSouth and DirecTV both likewise refer to the technological difficulties in modifying a DMA in their Comments. BellSouth Comments at 13; DirecTV Comments at 12. DirecTV notes that it may have difficulties in market modifications due to spot beam technology, as it designed its spot beam satellite to correspond as closely as possible to the 1999-2000 Nielsen Media Research DMA market. An expansion beyond the borders of the 1999-2000 Nielsen DMA markets is likely to subject DirecTV to carriage obligations it cannot meet. DirecTV Comments at 21. BellSouth likewise states that requiring DTH providers to add new local-into-local signals to an existing complement of signals may not be technically or practically feasible. BellSouth Comments at 13. The FCC needs to

keep these technological limitations in mind in enacting any market modification regulations.

B. Limitations on Coverage of Markets by Spot Beams

DirecTV raises an issue in its Comments regarding a technical obstacle to full coverage of a DMA. In certain instances, a spot beam cannot cover an entire DMA composed of non-contiguous, distant counties. DirecTV cites as an example Eureka County, Nevada located near the center of the state of Nevada, but approximately 400 miles from the edge of the Denver, Colorado DMA boundary and included in the Denver DMA. DirecTV Comments at 22. LTVS agrees with DirecTV that coverage of such distant DMAs may be problematic with the use of spot beam technology. In such instances, DirecTV suggests that the FCC should allow the provider to provide service to those areas within the contour of the spot beam. DirecTV Comments at 23. LTVS agrees with DirecTV that service should only be required in areas within the contour of the spot beam, and additionally suggests that the FCC specifically waive coverage, in these certain rare instances, for areas outside the spot beam contour based upon the technical limitation caused by the specific spot beam formation.

Another technical issue related to use of spot beams cited by DirecTV is the inability to provide coverage at the border of a DMA due to interference with another spot beam. The spot beams are designed to prevent interference from adjacent spot beams and may require the exclusion of a bordering area of a covered DMA. Again, DirecTV suggests that the Commission allow providers in this

instance to provide coverage to those areas within the contour of the spot beam. DirecTV Comments at 22. LTVS agrees with DirecTV on this point, and again additionally suggests that the FCC only waive coverage, in these specified circumstances, in those certain areas affected by spot beam interference based upon the specific technical limitations at issue.

C. Modification of Markets

Commenting parties present several examples of situations in which a market might be modified. One of the examples presented is if a community is removed from a DMA by a subsequent Nielsen publication. DirecTV asserts that if a community is removed from a DMA, the carrier should still provide local channels so that subscriber access remains consistent. DirecTV Comments at 18 – 19. *See also* BellSouth Comments at 12. Pursuant to the Copyright Act, a provider can only carry local signals in the local market. "Local market" is defined for commercial stations as the DMA in which the station is located and all commercial television broadcast stations licensed to a community within the same DMA.¹¹ LTVS believes that once a community is removed from a DMA, carriage cannot be provided to that community. However, a provider should be able to continue coverage if the community is moved to an adjacent covered DMA. For example, if Anne Arundel is moved from the Baltimore DMA to the Washington, D.C. DMA (adjacent DMAs), the provider could "switch" the subscribers' coverage from the Baltimore to the Washington, D.C. stations. If a provider is serving a community and the

¹¹ 17 U.S.C. § 122(j).

community is moved to an adjacent covered DMA, the carrier can thus provide service in the new DMA by virtue of conditional access technology. Thus, subscribers benefit from continuous coverage by access to the new DMA signals.

Another request raised in comments is that a provider should have the right to cease carriage of a station in a DMA. LTVS disagrees with this proposition. DirecTV argues that markets should be modified to allow for the removal of stations that are not substantially viewed in the local market in which they are carried. DirecTV Comments at 17. LTVS disagrees with allowing providers to refuse carriage to stations within a DMA based on viewership patterns. The SHVIA does not grant to the FCC or the providers the authority to exclude stations from local coverage due to factors such as viewing patterns. DirecTV also asks the FCC to impose a rule allowing carriers, at their discretion, to limit the carriage area to the station's Grade B service contour within the DMA, so that stations on the "fringe" of a DMA do not get carriage throughout the DMA. DirecTV Comments at 23. LTVS does not agree with DirecTV on this point.

Another related scenario is a station outside of a DMA that is substantially viewed within the DMA, and the issue of whether viewing patterns would justify the inclusion of the station in the DMA. BellSouth asserts that the addition of stations to a DMA, based on viewing patterns, should not be allowed. BellSouth Comments at 12. LTVS agrees with BellSouth. BellSouth's position is that a station's must-carry rights are limited to the DMA that includes its community of license. The DMA with the community of license is the necessary requirement for

carriage and other factors, such as viewing patterns, local programming and station technical coverage which are relevant to a Section 614(h)(1)(c) market modification decision, cannot be used to give a station must-carry rights in a market if the station's community of license is not in the applicable DMA. BellSouth Comments at 12. LTVS agrees with Bell South that modification of the DMA based on cable criteria, such as viewing patterns, is not authorized by SHVIA. SHVIA does not provide for including those stations outside the DMA in the local market.

D. FCC Market Modification Review

BellSouth suggests that the FCC implement a review of DMAs every five years to solicit notice and comment and, if warranted, modify DMAs. LTVS's position is that market modification is difficult based on satellite technology and that markets should be based on the 1999-2000 Nielsen publication or the publication in effect when the rules are implemented. LTVS Comments at 13 - 14. Once launched, revisions to a satellite for market modifications are difficult, at best. Should the FCC choose to impose a market modification procedure, LTVS suggests that market definitions be changed every fifteen years, the approximate life span of a satellite. It is not technically feasible to revise DMAs on a more-frequent basis.

VII. LTVS AGREES THAT A STANDARD SHOULD BE ESTABLISHED TO MEASURE MATERIAL DEGRADATION OF LOCAL SIGNALS.

The NAB suggests that the Commission adopt objective criteria in order to evaluate whether a local station's signal is being materially degraded in its satellite carriage. These three criteria are: (1) carrier to noise ratio; (2) bit error rates; and (3) bit rate allocation. NAB Comments at 19 - 20. LTVS agrees with the NAB that a

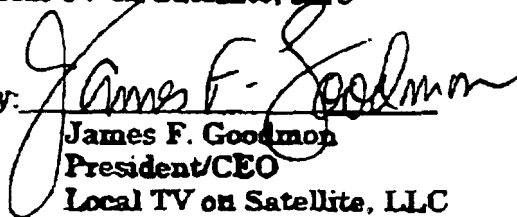
standard should be established to evaluate the material degradation of a local signal. LTVS defers to the FCC's judgment to study these criteria, as well as any other objective criteria that could be used for the measurement of material degradation, and then to define a standard. Any new criteria should be reconciled as may be necessary to take into account the satellite delivery platform.

VIII. CONCLUSION

LTVS asks that the FCC adopt reasonable carriage regulations incorporating LTVS's comments and proposals as set forth in these Reply Comments and the Comments previously filed by LTVS in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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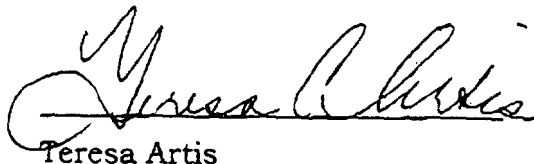
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